

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leif Drake	Team: Team # 4	CCRB Case #: 200502196	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 02/20/2005 12:10 AM	Location of Incident: W. 128th Street & Convent Avenue, Manhattan	Precinct: 26	18 Mo. SOL 8/20/2006	EO SOL 8/20/2006	
Date/Time CV Reported Wed, 02/23/2005 11:42 PM	CV Reported At: Precinct	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 03/01/2005 12:07 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Lucas	06326	924089	PBMN
2. SGT Gregory Pekera	04870	919546	PBMN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Fox	15136	923840	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera stopped and questioned § 87(2)(b)	
B.SGT Gregory Pekera	Force: Sgt. Gregory Pekera used physical force against § 87(2)(b)	
C.POM Anthony Lucas	Abuse: PO Anthony Lucas searched § 87(2)(b)	
D.POM Anthony Lucas	Discourtesy: PO Anthony Lucas spoke obscenely and/or rudely to § 87(2)(b)	

## Synopsis

On February 20, 2005, at approximately 12:10am, § 87(2)(b) was talking on his cell phone and walking north on Convent Avenue near 126<sup>th</sup> Street in Manhattan when he was stopped by three uniformed police officers in a taxi cab (**Allegation A**). Sgt. Gregory Pekera slapped the phone from § 87(2)(b)'s hand (**Allegation B**), then PO Anthony Lucas searched and frisked him (**Allegation C**) and used discourteous language (**Allegation D**). § 87(2)(b) was released shortly thereafter without summons, arrest, or injury.

§ 87(2)(g)  
[REDACTED]

## Summary of Complaint

§ 87(2)(b) filed a written complaint at the 28<sup>th</sup> Precinct on February 23, 2005 (encl.4a-4b), which was entered into CCRB's call processing system on March 1, 2005 by Sgt. Mark Simmons of the 28<sup>th</sup> Precinct. On March 11, 2005, § 87(2)(b) made an initial statement over the phone and on January 18, 2005, § 87(2)(b) provided an in-person statement. § 87(2)(g)

On February 20, 2005 at 12:10am, § 87(2)(b) exited the subway at Morningside Avenue and 125<sup>th</sup> Street in Manhattan, after taking the C train from 14<sup>th</sup> Street. § 87(2)(b) telephoned his girlfriend and walked north on Convent Avenue towards his grandmother's house. He considered taking the bus and stopped briefly at 125<sup>th</sup> Street but changed his mind and continued walking north three blocks until he was stopped by three uniformed officers driving in what looked to be a "disguised" yellow taxi. An officer – later determined to be Sgt. Gregory Pekera – exited the vehicle and told § 87(2)(b) to put his hands up and to hang up the phone. § 87(2)(b) attempted to explain what was happening to his girlfriend for approximately ten seconds, at which point Sgt. Pekera, who was standing on § 87(2)(b)'s right side, slapped § 87(2)(b)'s right hand, knocking the cell phone to the ground. § 87(2)(b) provided his driver's license and school ID, which Sgt. Pekera took inside the taxi to PO Daniel Fox, who remained in the driver's seat during the entire incident. The second officer – later determined to be PO Anthony Lucas – then searched § 87(2)(b)'s pockets, handcuffed him, and pushed him against the wall. PO Lucas searched him again and made him sit on the ground. PO Lucas questioned § 87(2)(b) about prior arrests, told him that he fit the description of a robbery suspect, and tried to convince him to go down to the precinct for a lineup. When § 87(2)(b) refused, he was released from the handcuffs and allowed to leave. Before walking away, § 87(2)(b) requested the names and badge numbers of both officers, which they provided. Sgt. Pekera stated, "I don't give a fuck if you take my badge number, it means one less day up here with y'all." § 87(2)(b) wrote down the names and badge numbers of both officers; he identified the two officers on the complaint form he filled out at the 28<sup>th</sup> Precinct. § 87(2)(b) did not sustain any injuries from the incident.

## Results of Investigation

### Officer Identification

§ 87(2)(b) wrote down the names and shield numbers of the officers at the end of the incident and provided them in his initial complaint. In their CCRB statements, the two officers confirmed their involvement in the incident. However, this investigation determined that § 87(2)(b) switched the names of the officers in his memory of the incident. In § 87(2)(b)'s account of the incident, PO Lucas slapped

the phone from his hand while Sgt. Pekera handcuffed him and conducted the search. In both PO Lucas' and Sgt. Pekera's accounts, the roles are reversed: Sgt. Pekera slapped the phone while PO Lucas handcuffed § 87(2)(b) and conducted a frisk. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Sergeant Gregory Pekera was interviewed on April 26, 2005 at the CCRB

Sgt. Pekera did not have any memo book entries relating to the incident (encl. 8). Sgt. Pekera provided the following statement to the CCRB from memory (encl. 9a-9b). On February 20, 2005, at approximately 12:10am, Sgt. Pekera, PO Lucas, and PO Daniel Fox were patrolling the 26<sup>th</sup> precinct as part of an overtime, Impact unit. The unit had received instructions from the commanding officer about a recent knife-point robbery pattern but Sgt. Pekera could not recall specific physical descriptions of the suspects. At 12:10am, PO Fox was driving southbound on Convent Avenue when Sgt. Pekera noticed an individual "milling" about and watching people walk by around the 126<sup>th</sup>-127<sup>th</sup> block. Sgt. Pekera stated that it was a very cold night and that people were generally walking quickly to their locations. PO Fox passed the individual, made a U-turn, and proceeded back towards the individual. The officers noticed and discussed the individual limping northbound behind an elderly couple. After watching for approximately thirty seconds, PO Fox pulled the car up to the curb next to the individual and Sgt. Pekera and PO Lucas approached him on foot. Sgt. Pekera asked where the individual, later identified as § 87(2)(b) was going and what he was doing; Sgt. Pekera told § 87(2)(b) that he fit the suspect of a robbery suspect. § 87(2)(b) offered evasive and unspecific answers and "fiddled" with a bulge near his left pant pocket. The officers instructed § 87(2)(b) to leave the pocket alone but § 87(2)(b) did not comply, PO Lucas frisked the pocket. Simultaneously, § 87(2)(b) flung his hands up over his head and in one motion pulled a silver object from his right pants pocket, which he then thrust in the direction of Sgt. Pekera's chest. Sgt. Pekera used the outside of his left, open-palmed hand to knock the silver object from § 87(2)(b)'s hand to the ground. PO Lucas immediately handcuffed § 87(2)(b). The object turned out to be a cell phone and § 87(2)(b) told the officers that he was trying to take a picture of their shields. The officers took § 87(2)(b)'s ID, brought it to PO Fox, who remained in the car, and checked for warrants. § 87(2)(b) was asked if had been arrested before, to which § 87(2)(b) stated that he was on probation for robbery. After finding no warrants, the handcuffs were taken off § 87(2)(b) and he was released. § 87(2)(b) asked for and received the officers' names and shield numbers, which he wrote down.

Officer Anthony Lucas was interviewed on April 26, 2005 at the CCRB

PO Lucas prepared the following entries for his memo book (encl. 10): "0010 250 - W. 127 /Convent Ave / § 87(2)(b) m/bk 6'4 / Under scaffolding, strange gait / Hands to pockets 3x / punched Out cell phone to sgt. chest / Probation for robbery." PO Lucas also prepared a stop and frisk report on February 20, 2005 (encl. 11). § 87(2)(g)

§ 87(2)(b) Suspected crime: criminal possession of weapon/ robbery.  
Circumstances that led to the stop: fits description, actions indicative of "casing" victim or location, suspicious bulge, furtive movements, actions indicative of engaging in violent crimes, wearing clothes/disguises commonly used in commission of crime. Physical force was used: handcuffing of suspect, suspected lunge with cell phone. Person was frisked for the same reasons used for stop. Additional Circumstances: area has high incidence of crime; evasive, false or inconsistent answers; ongoing investigation; suspect had prior arrest for robbery; and time, day, season correspond to reports of criminal activity.

§ 87(2)(g)

§ 87(2)(b). PO Lucas stated that the unit was informed of the knife-point robbery pattern but also robberies targeting elderly people and robberies at gunpoint. Furthermore, PO Lucas mentioned physical descriptions of the suspects (male, Black, 20-30yrs) that he remembered from crime sheets distributed throughout the command, but not necessarily for that tour specifically. § 87(2)(g)

§ 87(2)(g) PO Lucas provided more details about where the individual was milling around: under scaffolding. PO Lucas also added that he suspected that the man was urinating. § 87(2)(g) PO Lucas explained that he not only saw § 87(2)(b) fidgeting with the left pocket but also saw a bulge, which he discovered was a plastic CD player when he frisked it. § 87(2)(g) Sgt. Pekera remembered § 87(2)(b) fiddling with his left pant pocket while PO Lucas remembered it being his lower left, jacket pocket. PO Lucas also stated that when he reached down to frisk the bulge in the pocket, § 87(2)(b) raised his arms but lowered them again and continued to speak with the officers. Only after PO Lucas asked § 87(2)(b) if he had been arrested before did § 87(2)(b) reach for his cell phone. According to PO Lucas, § 87(2)(b) reached into the right, breast pocket of his jacket, not the right pant pocket, as Sgt. Pekera stated. § 87(2)(g)

#### Police Department Documents

The SPRINT index indicates no related crimes at the time of the incident (encl. 13). Most notably, there are no specific reports of robbery in the area.

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### Officer's CCRB Histories

Neither Sgt. Gregory Pekera nor PO Anthony Lucas have any substantiated allegations in their CCRB histories (encl. 1 and encl. 2).

§ 87(2)(b) has not filed any previous complaints with the CCRB (encl. 3).

#### Conclusions and Recommendations

The basic facts of the case are as follows. After stopping briefly, § 87(2)(b) walked north on Convent Avenue until Sgt. Pekera and PO Lucas stopped him near 127<sup>th</sup> Street. § 87(2)(b) was questioned about his destination, his arrest history, and what he was doing. He was also told that he fit the description of a robbery suspect. At some point, one of the officers slapped § 87(2)(b)'s cell phone from his right hand onto the ground. The other officer then placed § 87(2)(b) in handcuffs. PO Fox, who remained in the car during the incident, checked § 87(2)(b)'s ID for open warrants but he found none. The handcuffs were taken off § 87(2)(b) and he was released without summons or arrest. § 87(2)(b) requested the officers' names and shield numbers, which they provided. The officers later filed a UF-250 stop & frisk report documenting the encounter.

§ 87(2)(g)

#### Credibility Assessment

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

***Allegation A: Sgt. Gregory Pekera stopped and questioned*** § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) stated during the incident and at the CCRB that he believed he was unjustly stopped because of his race. § 87(2)(g)

First, the officers stated that they received oral instructions at the beginning of their patrol regarding a pattern of knifepoint robberies in the area. PO Lucas stated that he had also been informed of gunpoint robberies, robberies of elderly people, and that the descriptions of the suspects were distributed throughout the command in crime sheets. Both officers stated that the area and time matched the aforementioned robbery pattern. By all accounts, one of the officers informed § 87(2)(b) during the incident that they were looking for robbery suspects. In addition to this contextual suspicion, both officers explained that § 87(2)(b) was sporadically stopping and walking with an uneven gait, the former could be perceived as ‘casing’ for a robbery and the latter as concealing a weapon. The officers noted that this behavior was especially unusual because it was a very cold night. § 87(2)(b) stated that he had initially decided to wait for the bus on Convent Avenue but then changed his mind. § 87(2)(b)

§ 87(2)(b) also stated that he was talking on the phone with his girlfriend, § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

***Allegation B: Sgt. Gregory Pekera used physical force against § 87(2)(b)***

There is no dispute that one of the officers slapped § 87(2)(b)'s cell phone from his hand. § 87(2)(g) [REDACTED]  
§ 87(2)(b) stated that PO Lucas – later determined to be Sgt. Pekera – slapped the phone when § 87(2)(b) did not end his call quickly enough. Both officers stated that after they had already questioned § 87(2)(b) he reached into his pocket, thrust the phone towards Sgt. Pekera's chest, and Sgt. Pekera slapped it away instantly. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

***Allegation C: PO Anthony Lucas searched § 87(2)(b)***

§ 87(2)(g) [REDACTED] § 87(2)(b) stated that Sgt. Pekera searched him before and after he was handcuffed. Both the officers stated that PO Lucas frisked § 87(2)(b)'s left jacket pocket before he grabbed for the cell phone and was subsequently handcuffed. PO Lucas stated that his limited frisk of that pocket was enough for him to determine that § 87(2)(b) was not armed. § 87(2)(g) [REDACTED]  
Both officers also stated that § 87(2)(b) "fiddled" with a pocket near his left hip; PO Lucas noted a bulge in that pocket. By all accounts, § 87(2)(b) was not sure of his grandmother's address, his destination that night, § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

***Allegation D: PO Anthony Lucas spoke obscenely and/or rudely to § 87(2)(b)***

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: